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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,371	02/07/2001	Cornelia Sprengard-Eichel	8369Q	6846

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EXAMINER

KIDWELL, MICHELE M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/778,371

Applicant(s)

SPRENGARD-EICHEL ET AL. *CH*

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 12 November 2002.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-7 and 9-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-7 and 9-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 07 February 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on 12 November 2002 is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Response to Arguments***

Applicant's arguments with respect to claims 1 – 7 and 9 – 20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description:

- "38" (as shown in figure 1)

A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

Claims 1 – 7 and 9 – 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With reference to claims 1 – 3 and 17, the applicant claims that the thermal cell actuator may change a mechanical property of a different component of the article. It is unclear what the applicant means in reciting a different component. This language is indefinite and the scope of the claim cannot be ascertained.

Claim 6 recites the limitation "the action of the caregiver" in line 1 and "the activation" in line 3. There is insufficient antecedent basis for these limitations in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1 – 4, 7, 9 – 10, 12 – 14 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Glaug et al. (US 5,797,892).

With respect to claim 1, Glaug et al. (hereinafter "Glaug") discloses an absorbent article comprising a backsheet (58), a liquid pervious topsheet (60) joined to the backsheet (col. 5, lines 34 – 38), an absorbent core (82) disposed intermediate the topsheet and the backsheet (figure 6) and a thermal cell actuator (54) which adds or removes heat from at least a portion of the absorbent article upon actuation so as to result in a useful function selected from the listed group as set forth in col. 8, line 51 to col. 9, line 16. The temperature change member (54) of Glaug will remove heat from at

least a portion of the absorbent article upon actuation so as to result in maintaining the article at a predefined temperature (i.e., 2.8° – 13.8° C) as set forth in col. 9, lines 3 – 5.

With reference to claim 2, Glaug discloses an absorbent article comprising a backsheet (58), a liquid pervious topsheet (60) joined to the backsheet (col. 5, lines 34 – 38), an absorbent core (82) disposed intermediate the topsheet and the backsheet (figure 6) and a thermal cell actuator (54) capable of adding or removing heat from at least a portion of the absorbent article to perform a useful function on the article or the environment between the article and a wearer (col. 8, lines 51 – 57) and a triggering mechanism connected with the thermal cell actuator whereby a non-urine based signal within the article causes the thermal cell actuator to add or remove heat from at least a portion of the absorbent article as set forth in col. 9, lines 61 – 63.

As to claim 3, Glaug discloses an absorbent article comprising a backsheet (58), a liquid pervious topsheet (60) joined to the backsheet (col. 5, lines 34 – 38), an absorbent core (82) disposed intermediate the topsheet and the backsheet (figure 6) and a thermal cell actuator (54) capable of adding or removing heat from at least a portion of the absorbent article to perform a useful function on the article or the environment between the article and a wearer as set forth in col. 8, lines 51 to col. 9, line 16.

While Glaug does not specifically disclose an electrically powered thermal cell actuator, a thermal cell actuator is disclosed nonetheless. The examiner reminds the applicant that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of

a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.

Regarding claim 4, Glaug discloses an absorbent article wherein the thermal cell actuator performs a function between the backsheet of the article and the skin of the wearer in response to a change in relative humidity, moisture or temperature as set forth in col. 8, lines 51 – 57.

As to claim 7, Glaug discloses an absorbent article wherein the thermal cell actuator controls humidity or temperature in the article as set forth in col. 8, lines 51 – 64.

With respect to claims 9 and 10, see col. 9, lines 45 – 52.

Regarding claim 12, Glaug discloses an absorbent article comprising a thermal cell actuator that provides a constant temperature in a region of the article during use of the article of about 15° to about 25° Celsius as set forth in col. 9, lines 3 – 5. Room temperature is considered as 24°C. When the article of Glaug is being used by a consumer under normal conditions, the change in temperature provided by the thermal cell actuator (i.e. 2.8° – 13.8° C) will result in a temperature equivalent to the claimed temperature.

As to claim 13, Glaug discloses an absorbent article wherein the thermal cell actuator is not in contact with the wearer's skin when the article is worn as set forth in figure 6.

Regarding claim 14, Glaug discloses an article wherein the thermal cell actuator is in vapor communication with the wearer's skin such that vapor can condensate inside the article as set forth in col. 16, lines 42 – 48.

With reference to claim 17, Glaug discloses a thermal cell actuator that changes a mechanical property of a different component of the article as set forth in col. 15, lines 20 – 39. The temperature change member allows the passage of the fluids, which then results in the mechanical property change of the dimensional change member (82).

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by McCoy (US 5,167,655).

With respect to claim 1, McCoy discloses an absorbent article comprising a backsheet (12), a liquid pervious topsheet (10) joined to the backsheet (figure 3), an absorbent core (22) disposed intermediate the topsheet and the backsheet (figure 3) and a thermal cell actuator (18) which adds or removes heat from at least a portion of the absorbent article upon actuation so as to result in a useful function selected from the listed group as set forth in col. 1, lines 30 – 32. The cold therapy pack (18) of McCoy will remove heat from at least a portion of the absorbent article upon actuation so as to result in maintaining the article at a predefined temperature (i.e. a temperature cooler than that of room temperature).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCoy (US 5,167,655) and further in view of Cheney, III et al. (US 5,534,020).

The difference between McCoy and claim 5 is the provision that the thermal cell actuator perform the function in response to the application of a normal force to compress a portion of the garment body by a caregiver.

Cheney, III et al. (hereinafter "Cheney") teaches a thermal cell actuator that performs the function in response to the application of a normal force to compress a portion of the garment body by a caregiver as set forth in the abstract.

It would have been obvious to one of ordinary skill in the art to modify the thermal cell actuator of McCoy to provide one that performs the function in response to the application of a normal force to compress a portion of the garment body by a caregiver because this allows the article to be used prior to utilizing the cold therapy technique which would extend the life of the article.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.  
See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3761

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

*Michele Kidwell*  
Michele Kidwell  
January 24, 2003

*Weilun Lo*  
WEILUN LO  
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